

# **Supervisory Border Patrol Agent TTC Legal Update Training**



United States Customs and Border Protection  
*Office of the Chief Counsel*

(b) (7)(C)



# Preliminary Matters

- What is the purpose of SBPA training?
- What is the purpose of the SBPA legal update?
- What do you expect from the legal update?
- When did you last attend formal legal training?
- What if a fellow agent asked you the following question(s), what would your answer be?



# Preliminary Matters

- If a car stops at an immigration checkpoint, is it seized?
- If a bus is sent to secondary at a checkpoint, is it seized?
- Are the people on the bus seized?
- If you perform a Roving Patrol Stop have you conducted a seizure?
- If you see a car driven by an illegal alien cross the border, can you search the car? How much of the car?





# Preliminary Matters

- What if you stop a car driven by an illegal alien, can you search the car incident to arrest? How much of the car?
- When must an agent *Mirandize* a suspect?
- If you see a pot plant in a car, can you lawfully enter the car to seize it? Under what theory?
- If you see a pot plant in a house, can you lawfully enter the house to seize it? Under what theory?



# Preliminary Matters

- If you use a listening device to overhear a conversation, is the action legal?
- What level of suspicion does an agent need to send someone into secondary at a checkpoint if there is no immigration violation?
- What must you do to conduct a lawful bus check? Does it matter where the bus is when you perform the check? Why?



# **Fourth Amendment**

# 4<sup>th</sup> Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, **SHALL NOT BE VIOLATED**, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.





# Articulable Facts

- Building blocks of suspicion
- Specific and Objective
- Quality not quantity
- Based on Training and Experience of the BPA
- Totality of the Circumstances
- How obtained
- Racial Profiling
  - *U.S. v. Montero-Camargo*, 208 F.3d 1122 (9<sup>th</sup> Cir. 2000)



# Levels of Suspicion

- Reasonable = Level of suspicion
- Level of suspicion is a label used to describe how certain an agent is that a set of facts is true
- Whether search or seizure is legal determined by level of suspicion agent had prior to search or seizure



# Levels of Suspicion



Probable Cause (Cause to Believe)

Reasonable Suspicion (Cause to Suspect)

Some or Mere Suspicion, (a hunch)

Zero or No Suspicion





# Seizures

- Seizure of an object – Government interference with a possessory right or interest
  - *United States v. Jacobsen*, 466 U.S. 109 (1984)
- Seizure of a person – Government interference with freedom of movement where a reasonable innocent person would not feel free to terminate the encounter
- Consensual Encounter (No seizure) – Government interference with freedom of movement where a reasonable person would feel free to leave or terminate the encounter





# Seizures - Types

- Zero Suspicion Detentions – POE, Immigration Checkpoints, Ramp Checks, Vessel Document Checks **DUI Checkpoints, License and Registration Checks**
- Reasonable Suspicion Detentions – “Investigative Detentions” or “Terry Stops” (Roving Patrol Stops)
- Seizures based on Probable Cause – Arrest of person or more permanent seizure of an object (for use as evidence or forfeiture)



# Temporary Seizure based on Reasonable Suspicion

- “Investigative Detention” or “Terry Stop” or “Roving Patrol Stop”
- Purpose = investigate suspicion of criminal activity
- Brief Investigative Inquiry
  - Brief = Due Diligence
    - *U.S. v. Sharpe*, 470 U.S. 675 (1985)
  - Investigative – confirm/dispel suspicions
  - Inquiry – least intrusive means
  - Required for ALL temporary seizures
- Disposition
- Cases
  - *Terry v. Ohio*, 392 U.S. 1 (1968)
  - *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975)
  - *Brendlin v. California*, 127 S. Ct. 2400 (2007)





# Permanent Seizure based on Probable Cause

- Object
  - Evidence
  - Fruits/Instruments of Crime
  - Contraband
  - Subject to Forfeiture
- Person
  - Probable cause that a crime is or has been committed
  - Probable cause that the person you are arresting committed the crime
- Arrest Defined



# Things the courts look at to determine when an investigative detention has become an arrest

- How far Suspect Moved
- Length of Detention/**Due Diligence**
  - Questions related to reason for stop
  - Number of suspects and agents involved
  - False Information from suspects
  - Backup necessary
  - Canine requested timely
  - Communication or computer problems





# Things the courts look at to determine when an investigative detention has become an arrest

- Tone/Demeanor
- What Suspect Told about the detention
- Miranda
- Degree and manner of force used
- Searched



# Use of Force

- Seizure if
  - Physically applies force
  - Person yields to agents show of force
- Reasonable under 4<sup>th</sup> Amendment if
  - Necessary
  - Reasonable
    - *Graham v. Connor*, 490 U.S. 386 (1989)
- Deadly Force reasonable if
  - Probable Cause to believe that agent or another is in imminent danger of death or serious bodily injury; and
  - Probable Cause to believe that deadly force is required to eliminate the threat of death or serious bodily injury
    - Imminent danger of death or serious bodily injury
      - Opportunity
      - Ability
      - Intent



# Use of Force Policies

- Fleeing Subjects
  - *Tennessee v. Garner*, 471 U.S. 1 (1985)
  - *Scott v. Harris*, 550 U.S. 372 (2007).
  - *Brooks v. Gaenzle*, 614 F.3d 1213 (10<sup>th</sup> Cir. 2010)
- Vehicles
  - Disabling Shots
  - Driver or Passenger
    - Danger of Death or Serious Bodily injury
    - Need to use deadly force outweighs any risk to the public
- Verbal Warnings
- Warning Shots





# Definition of Search

- Search

- Government +
- Intrusion [physical, visual, auditory] +
- Into a reasonable expectation of privacy (REP)

1. Whether the individual, by his conduct, has exhibited an actual expectation of privacy; that is, whether he has shown that he sought to preserve something as private
2. Whether the individual's expectation of privacy is one that society is prepared to recognize as reasonable

- *Katz v. United States*, 389 U.S. 347 (1967)





# Search

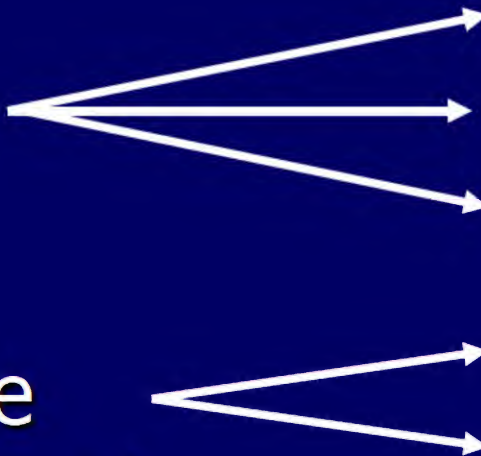
■ Government

+

■ Intrusion

+

■ Reasonable  
Expectation of  
Privacy (REP)



# Situations where Courts have routinely found REP

- A Persons Body
- Dwellings and Curtilage
  - Proximity/Connection to Dwelling
  - Enclosed?
  - How used
  - Steps taken to prevent observation
- Buildings
- Baggage
  - *Bond v. United States*, 529 U.S. 334 (2000)
- Conveyances
- Private Communications



# No Reasonable Expectation of Privacy

- Open Fields
  - No REP from Physical Intrusion
  - *U.S. v. Oliver*, 466 U.S. 170 (1984)
  - Statutory Authority to enter private lands
    - INA § 287(a)(3) Patrol Border
      - Customary or reasonable and necessary to prevent entry of illegal aliens into U.S.
      - No REP
      - 25 miles
      - Consent of landowners/occupants
      - No consent = supervisor
      - *U.S. v. Romero-Bustamente*, 337 F.3d 1104 (9<sup>th</sup> Cir. 2003)
    - Agricultural Lands
      - INA § 287(e)
    - Border Search





# No Reasonable Expectation of Privacy

- Open View – No REP from visual intrusion
- Overheard Conversations – No REP from auditory intrusion with unaided ear

# Search

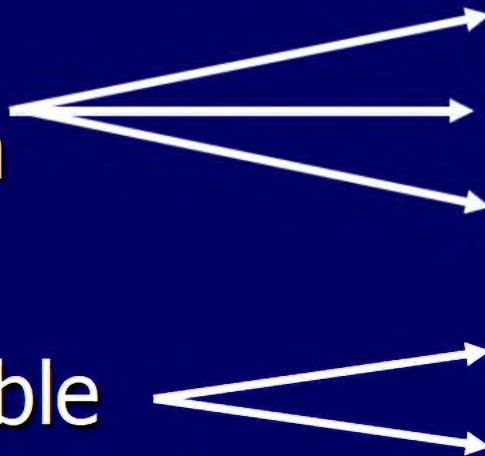
■ Government

+

■ Intrusion

+

■ Reasonable  
Expectation of  
Privacy (REP)



# No Reasonable Expectation of Privacy

- Abandoned Property
  - Disclaimer of Ownership
    - *U.S. v. Hernandez*, 7 F. 3d 944, 947 (10<sup>th</sup> Cir. 1993)
  - Examples
    - Trash
    - Bailout
  - Cannot be caused by illegal government conduct
  - Lost Property





# No Reasonable Expectation of Privacy

- Technology
  - Technology
  - Used to Overcome REP =
  - Search
  - Examples
    - Flashlights
    - Binoculars
    - Night Vision Equipment (
      - *U.S. v. Vela*, 486 F. Supp. 2d. 587 (W.D. Tex. 2005)
    - Infrared Imaging
      - *Kyllo v. U.S.*, 121 S. Ct. 2038 (2001)



# No Reasonable Expectation of Privacy

- Canine Sniffs
  - No Search
    - No Intrusion
      - Unless intrudes on REP
        - Body
        - Clothing
        - Dwelling or Curtilage
  - Probable Cause
  - *U.S. v. Place*, 462 U.S. 696 (1983)
  - *Illinois v. Caballes*, 125 S. Ct. 834 (2005)



# Constitutional Analysis

1. Does the proposed conduct constitute a Fourth Amendment Seizure or Search?
2. If the conduct constitutes a Fourth Amendment Seizure or Search, do you have a warrant, or may you act upon a recognized exception to the Fourth Amendment's warrant or probable cause requirements?
3. What level of suspicion is required to make the Seizure or Search constitutionally reasonable?
4. What statutory or regulatory restrictions impact upon the proposed operation and how do those restrictions impact upon your execution of those operations?



- Warrant
- Probable Cause
- Act Reasonably
  
- Prepare Warrant and Affidavit
- Submit to AUSA for Approval
- Review by Judge
- 14 day rule
- Daytime
- “knock and announce”
- Hudson v. Michigan
- Detention/Frisk ?
- *Muehler v. Mena 125 S. Ct. 1465 (2005)*
- Copies (Warrant/Inventory)
- What you can seek
  - Evidence/Contraband/Instruments/People
- What you can seize
  - Items Listed/“Plain View”



# Reasonable Searches and Seizures

- Exceptions to Warrant Requirement
  - Arrest (seizure) in Public
  - Plain View Seizure (seizure)
  - Mobile Conveyance (search)
  - Exigent Circumstances (search)
    - People – hot pursuit
    - Things – now or never
      - *Kentucky v. King*, 131 S. Ct. 1849 (2011)
    - Emergency – situation
      - *Michigan v. Fisher*, 130 S. Ct. 546 (2009)

# Reasonable Searches and Seizures

- Exceptions to the Warrant and Probable Cause Requirements
  - Search Incident to Arrest
    - *AZ v. Gant*, 129 S.Ct. 1710 (2009)
  - Consent (search)
    - *Georgia v. Randolph*, 547 U.S. 103 (2005)
    - *United States v. Reeves*, 524 F.3d 1161 (10<sup>th</sup> Cir. 2008)
    - *U.S. v. Castellanos*, 518 F.3d 965 (8<sup>th</sup> Cir. 2008)
  - Terry Stop (seizure)
  - Terry Frisk (search)
    - *AZ v. Johnson*, 129 S. Ct. 781 (2009)
    - *Minnesota v. Dickerson*, 508 U.S. 366 (1993)
  - Inventory (search)
  - Checkpoint (seizure)
  - Border Search (seizure and search)



# As Your Suspicion ↑ So Does Your Authority to Search and Seize ↑

R.C.

**Border Nexus & No Material Change = Creates a "Border" to Conduct a Detention and Search At**

P.C.

Warrant

Arrest in  
Public

Plain View  
Seizure

Mobile  
Conveyance  
Search

Hot  
Pursuit of a  
Fleeing Felon

"Now or  
Never"  
Search

Emergency  
Search

R.S.

Investigative  
Detention

Frisk  
(Search for  
Weapons Only)

Protective  
Sweep  
(Search for Hidden Threats  
to the Agent, e.g.,  
Assailant or Environmental)

Non-Routine"  
Search Incident  
to Arrest [SIA]  
Strip Search of Person  
Search of "Gant" area in a Car

Border  
Search  
[Partial Body Search of  
a Person & Destructive  
Search of an Object]

Zero Susp

+

Admin Reason

Border Detention & Search

[Patdown Search of a Person, Examine  
Information (hard copy and electronic), Non-  
Destructive Search of an Object]

Pilot Cert. Inspection / Vessel Doc Ck. / BP Immigration Check Pt

Pilot involved in flight operations? / Vessel in correct waters? / Properly situated check point?

Zero Susp

Consensual  
Encounter

Consent  
Search

Inventory  
Search

"Routine"  
Search Incident to Arrest  
[SIA]

Arrestee's Exterior Clothing  
Arrestee's immediate vicinity

..... The other person is in control

# CASE UPDATES

# Linewatch

- *United States v. Romero-Bustamante*, 337 F.3d 1104 (9<sup>th</sup> Cir. 2003)
- *United States v. Troop*, 514 F.3d 405 (5<sup>th</sup> Cir. 2008)
- *United States v. Perea-Rey*, (9<sup>th</sup> Cir. 2012, Citation Pending)
- *United States v. Hernandez-Hernandez*, 519 F.3d 1236 (10<sup>th</sup> Cir. 2008)





# Roving Patrol

- *United States v. Olivares-Pacheco*, 633 F.3d 399 (5<sup>th</sup> Cir. 2011)
- *United States v. Bautista-Silva*, 567 F.3d 1266 (11<sup>th</sup> Cir. 2009)
- *United States v. Nasser*, 479 F.3d 1166 (9<sup>th</sup> Cir. 2007)
- *United States v. Juarez-Torres*, 441 F. Supp. 2d 1108 (D. NM 2006)



# Immigration Checkpoints

- *U.S. v. Portillo-Aguirre*, 311 F.3d 647 (5<sup>th</sup> Cir 2002)
- *U.S. v. Jaime*, 473 F.3d 178 (5<sup>th</sup> Cir. 2006)
- *U.S. v. Ventura*, 447 F. 3d 375 (5<sup>th</sup> Cir. 2006)
- *U.S. v. Carlos*, 148 Fed. Appx. 622 (9<sup>th</sup> Cir. 2005)
- *U.S. v. Gabriel*, 405 F. Supp. 2d 50 (D. Me. 2005)



# Transportation Checks

- *United States v. Drayton, 536 U.S. 194 (2002)*
- Border Patrol Handbook, Chapter 14.4(d)





# U.S. v. Drayton

- (1) Agents board the bus with the permission of the operator during a scheduled stop.
- (2) Up to three agents board the bus in uniform or in plainclothes with badges visible.
- (3) Agents do *not* use the public address system on the bus and do *not* make a general announcement on-board the bus.
- (4) One agent inspects the passengers beginning at the rear of the bus and working forward.
- (5) One cover agent remains at the rear of the bus, and one cover agent remains at the front of the bus *without* blocking the door.
- (6) The contact agent approaches passengers from behind and speaks in a voice just loud enough for individual passengers to hear.
- (7) Agents *do not* block the aisle and *do not* obstruct the exit doors.
- (8) The contact agent identifies himself or herself and displays a badge upon approaching each passenger.
- (9) The contact agent may ask questions, request identification, and/or request consent to conduct a search or a frisk.
- (10) The contact agent *is not required* to advise passengers of their right to refuse to cooperate.
- (11) Any passenger who refuses to answer questions or who chooses to exit the bus must be allowed to do so.



# **BORDER SEARCH**

# Border Search Requirements

- Performed by an authorized government officer
- Searching for merchandise, evidence of a person's admissibility
- At the "border"



# – 1. Performed by authorized government officer

- CBPO
- ICE
- OAM
- Coast Guard (E4 and above)
- BPA
- Cross Designees
- 19 USC § 507
  - CBP officer who is authorized to conduct border searches to demand assistance from any person when such assistance is necessary to perform the officers lawful duties



## –2. Searching for

### ■ Merchandise

- Goods/wares/chattels
- Monetary Instruments
- Any tangible thing not part of the human body

### ■ Evidence of admissibility

- Anything that could help prove that an alien may or may not be lawfully admitted into the U.S.

### ■ Aliens

- People are not merchandise, however you have authority to search for people under the INA



## –3. At the border

- Land border
- Sea border
  - 3 miles
  - 9 miles
- Air border





- 1. Reasonable certainty there has been border nexus
  - Person or thing crossed the border; or
  - Person or thing had meaningful contact with someone or something that crossed the border
- 2. Reasonable certainty there has been no material change
  - Person or thing has not changed
  - No opportunity to acquire domestic items
- 3. Search occurs at first practical detention point



- 1. Reasonable certainty there will be a border nexus
- 2. Reasonable certainty there will be no material change
- 3. Search occurs at last practical detention point
- Purpose: Insure exports comply with U.S. law
- 22 USC § 2778



- Conducted some point beyond FEB Inbound
- Reasonable certainty there has been a border nexus
- Reasonable certainty there has been no material change
- Reasonable suspicion of criminal activity
- Examples





# Border Search-Policy Issues

- Containers-
  - Zero Suspicion: Luggage, X-Ray, Cargo, Gas Tank, *U.S. v. Flores-Montano*, 541 U.S. 149 (2004)
  - Reasonable Suspicion: Destructive searches
- People
  - Zero Suspicion: Pat down
  - Reasonable Suspicion: Partial Body Search, X-ray
- Documents, books, Pamphlets and other Printed Materials
  - Zero Suspicion: glance at the document, *see United States v. Seljan*, 547 F.3d 993 (9<sup>th</sup> Cir. 2008)
  - Reasonable Suspicion: detaining or copying a document
    - Absent Probable Cause may only retain documents regarding immigration matters
  - Probable Cause- Permanent seizure of the document or copy
- Computers, Hard Drives, Electronic or Digital Storage Devices
  - Zero Suspicion: examining device and glancing at files
  - Reasonable Suspicion: detaining device, *see United States v. Cotterman*, 637 F.3d 1068 (9<sup>th</sup> Cir. 2011); *U.S. v. Arnold*, 533 F. 3d 1003 (9<sup>th</sup> Cir. 2008)  
(DO NOT COPY FILES)
    - When in doubt contact computer forensic specialist to conduct search
  - Probable Cause- Seize device as evidence or for forfeiture.
  - Absent Probable Cause may only retain documents regarding immigration matters

# **SELECT STATUTORY AUTHORITIES AND CRIMES**

# Statutory Authority Overview

- **INA § 235/8 U.S.C. § 1225** operational authority at the line (arriving aliens)
- **INA § 287/8 U.S.C. § 1357-** interior operational authority
- **INA § 252/8 U.S.C. § 1282-** crewmen/conditional landing permits
- **Title 19 (USC) Customs authorities**





U.S. Customs and  
Border Protection

MAY 07 2008

## MEMORANDUM FOR:

W. Ralph Basham  
Commissioner

## FROM:

David V. Aguilar  
Chief  
U.S. Border Patrol

## SUBJECT:

Defining Reasonable Distance for Border Patrol Operations

On April 29, 2008, the Office of Border Patrol (OBP) briefed the Commissioner's office as well as the Office of Chief Counsel (OCC) and the Office of Rules and Regulations (ORR) on the roving patrol authority and limitations within 100 miles of the International Border by policy outlined in 8 C.F.R. § 287.1 (2) & 287.1 (b). I was seeking to amend the definition of reasonable distance as outlined in the existing regulation under Section 287.1(b), which states in part the following:

*Whenever in the opinion of a Chief Patrol Agent or Special Agent in Charge a distance in his or her sector or district of more than 100 air miles from any external boundary of the United States would because of unusual circumstances be reasonable, such Chief Patrol Agent or Special Agent in Charge shall forward a complete report with respect to the matter to the Commissioner of Customs and Border Protection, or the Assistant Secretary for Immigration and Customs Enforcement, as appropriate, who may, if he determines that such action is justified, declare such distance to be reasonable.*

I have reviewed and taken into consideration the topography of the United States, the existing confluence of transportation arteries leading from the external boundaries of the United States, the population density of the United States, the current types of conveyances used by smugglers and aliens seeking unlawful entry through the interior of the United States, and the wealth of reliable information as to the movements and routing of persons effecting illegal entry into the United States. Based on this extensive review and the briefing on April 29, 2008, it was determined by OBP, OCC, and ORR that "reasonable distance" from the existing regulatory definition of 100 air miles should be removed from the Code of Federal Regulations (CFR).

The Border Patrol will continue the same HQ approval process when contemplating highway operations or enforcement actions at transportation hubs that are required. OBP will support ORR and OCC with any briefings or information requests to facilitate the change in the CFR.

Approve/date: WRB

Disapprove/date: \_\_\_\_\_

Modify/date: \_\_\_\_\_

Needs discussion/date: \_\_\_\_\_

# Statutory Authority

## ■ Private Lands

- INA § 287(a)(3)—Enter Private lands/not dwellings to search for aliens and patrol border
  - 25 Miles
  - Policy restrictions on schools, places of worship and funerals
  - DHS Policy is to inform landowner
- INA § 287(e)
- 19 U.S.C. § 1595(b) – Enter private lands to conduct a border search: *U.S. v. Emmens* 893 F.2d 1292 (1990)



# Statutory Authority

## ■ Arrest

### –INA § 287(a)(2)—Illegal Aliens

- Inspection
- 48 Hours

### –19 U.S.C. § 1589a – any federal crime in agents presence federal felonies outside of agents presence

- *U.S. v. Juvenile Female*, 566 F.3d 943 (9<sup>th</sup> Cir. 2009)





# T-19 Tools-Overview

## ■ Authority:

- 19 U.S.C. § 1589a (3) (Criminal Arrest)
- 19 U.S.C. § 1595 (b) (Enter Private Land)
- 19 U.S.C. § 1595a (Forfeiture)
- 19 U.S.C. §§ 1581 and 482 (Border Search)

## ■ Violations

- 19 U.S.C. § 1433 / 19 U.S.C. § 1436 (Reporting Requirements)
- 19 U.S.C. § 1459 (Illegal Entry)
- 18 U.S.C. § 545 (Smuggling Merchandise)

# Reporting Requirements

- Reporting Requirements
  - 19 U.S.C. § 1433(a) – Reporting of Vessel Arrival
  - 19 U.S.C. § 1433(b) – Reporting Vehicle Arrival
    - Penalties (19 U.S.C. § 1436(a))
      - Civil = \$5000 and any conveyance used in connection with violation is subject to forfeiture
      - Criminal (1 to 5 years, up to \$10,000)
      - Forfeiture of merchandise
      - Undeclared articles treated as smuggled



# Reporting Requirements

- Reporting Requirements
  - 19 U.S.C. § 1433(c) – Reporting Arriving Aircraft
  - 19 U.S.C. § 1459
    - 19 U.S.C. 1459(a) – Pedestrians
    - 19 U.S.C. § 1459(c) – Unreported Conveyances
    - Penalties
      - 19 U.S.C. § 1459(e) – Unlawful Acts
      - 19 U.S.C. § 1459(f) – Civil Penalty
      - Up to \$5000 fine
      - 19 U.S.C. § 1459(g) – Criminal Punishment
      - 1 year/\$5,000





# Merchandise Smuggling

- 18 U.S.C. § 545
  - Fraudulently or knowingly
  - Import or bring into the U.S.
  - Any Merchandise
  - Contrary to Law
  - Contrary to any law
  - Penalty
  - 20 Years/\$250,000
  - Forfeiture of the merchandise



# Money Crimes

- 31 U.S.C. § 5316
  - Currency and Monetary Instrument Reporting
  
- 31 U.S.C. § 5332
  - Bulk Cash Smuggling
  
- 18 U.S.C. § 1960
  - Illegal Money Transmitters



# Forfeiture Statutes

## ■ Customs Forfeitures

- 19 USC § 1433
  - Conveyances used to enter U.S. in violation of customs laws
- 19 USC § 1595a(a)
  - Items used to transport or hid merchandise
- 19 USC § 1595a(c)
  - Merchandise imported contrary to law
- 19 USC § 1595a(d)
  - Merchandise exported contrary to law
- 19 USC § 1703
  - Vessels



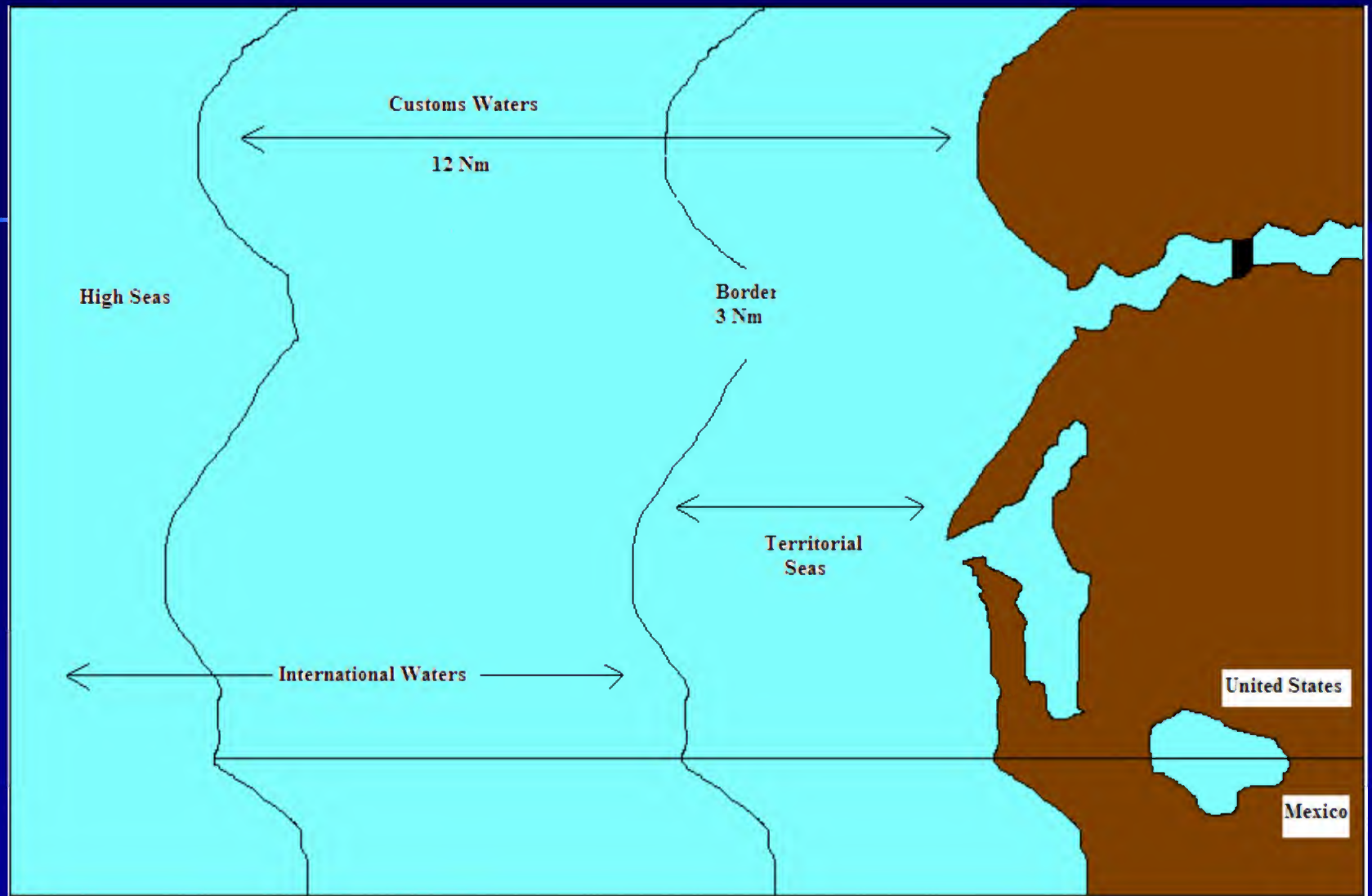
# Forfeiture Statutes

- Immigration Forfeitures
  - 8 USC § 1324(b)
- Controlled Substance
  - 21 USC § 881
- Monetary Instrument Forfeitures
  - 31 USC § 5317-CMIR Forfeitures
  - 31 USC § 5332(c)-Bulk Cash Smuggling Forfeitures
  - 18 USC § 1960-Illegal Money Transmitter Forfeitures





# Maritime Operations



# Title 19 Maritime Operations

Vessels “employed to defraud the revenue” of the United States

- Without navigational lights
- Failure to stop after being ordered to do so (“Hot Pursuit”)
- Hovering vessel



# Title 19 Maritime Operations

- Why
- Where your maritime authority comes from
  - *United States v. Villamonte-Marquez*, 462 U.S. 579 (1983)
  - 19 U.S.C. § 1581
    - Hail, Stop, Board and Check documents of any vessel located in;
      - Customs waters
      - Inland waters with ready access to open sea
      - Inland waters with ready access to foreign territory
      - High seas if being used to defraud revenue of United States
      - Foreign Vessel subject to special arrangement

# Title 19 Maritime Operations

- Examples of types of documents you can check
  - Manifests
  - Coast Guard Certificates
  - State Documents
  - Permits
  - Licenses
  - Insurance
  - Examine vessel's official number
    - May enable agent to lawfully travel deep into ship to examine the number
      - Open View observations
        - Reasonable Suspicion – Brief Investigative Inquiry
        - Plain View Seizure
        - Readily Mobile Conveyance Search
        - FEB inbound or outbound
        - Extended Border search

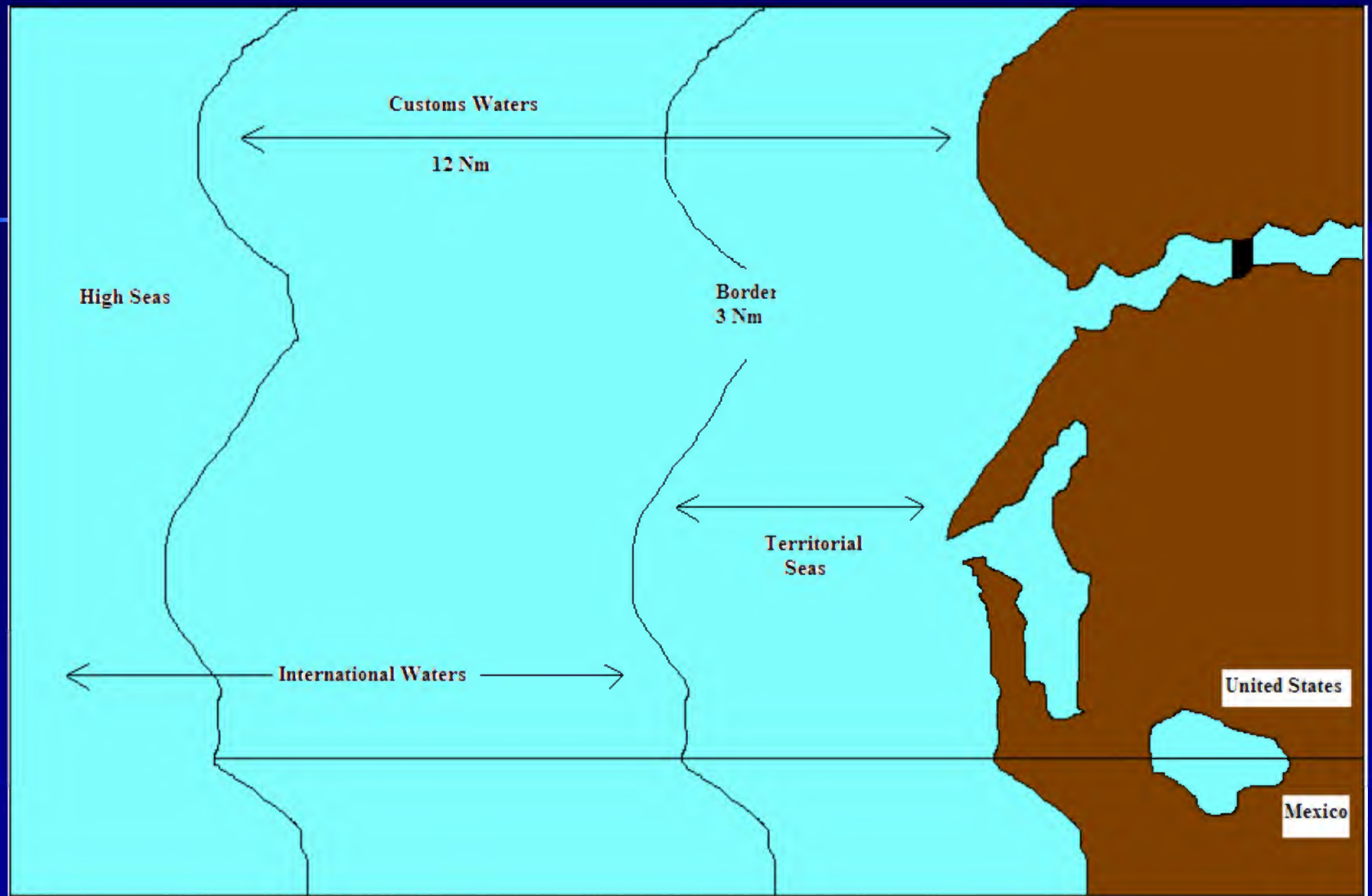
# Title 19 Maritime Operations

- 19 U.S.C. § 2237
  - Knowingly disobey order of federal officer to heave to
  - Forcibly resist or interfere with boarding
  - False information given to officer during boarding



# Title 19 Maritime Operations

- 19 U.S.C. § 1587
  - Board for documents check and for examination of cargo any vessel “employed to defraud revenue” of the United States.
    - Hovering
    - Failure to display lights
    - “Hot Pursuit”
    - Foreign vessel subject to examination pursuant to treaty or special arrangement
  - Cargo examination on site or at most convenient POE



# Title 19 Maritime Operations

- 19 U.S.C. § 1703 – Seize for Forfeiture
  - Used to defraud revenue
  - Built or outfitted for smuggling
- Summary
  - Hail, stop board and conduct a document check on any vessel in Customs waters or Inland waters with ready access to open seas
    - Consent
    - Reasonable Suspicion
    - Frisk?
    - Protective Sweep?
    - Readily Mobile Conveyance
    - FEB inbound or outbound
  - Used to defraud revenue
    - Examine documents and cargo
    - Seize for forfeiture

# REPORT WRITING



# REPORT WRITING

REPORT WRITING IS A CRITICAL PART  
OF YOUR JOB

- “If it isn’t in writing, it didn’t happen.”

or

- Without a well-written report, there are no articulable facts

# WHY WE WRITE REPORTS

- Memory Aid- for both you and the Border Patrol
- Evidence – for BP (immigration court) and against you
- Sales Document-
  - AUSA has limited resources
  - Your supervisor's supervisor

# THERE ARE THREE KEYS TO A GREAT REPORT:

- GET IT ALL
- GET IT RIGHT
- MAKE IT CLEAR

# GET IT ALL

All the articulable facts:

WHO

WHAT

WHEN

WHERE

HOW

WHY



# GET IT RIGHT

Write chronologically

Check and double check the facts

Practice your powers of observation

Proofread!!

Answer the “why”

# MAKE IT CLEAR

Write in the first person

Use names – not labels

Use active voice

Use simple words and phrases

Check your spelling

Avoid conclusion words

# USE NAMES, NOT LABELS

Vehicle

Car, boat, plane, roller skates

Residence

House, apartment, house  
boat, cardboard box

Victim or Suspect

A person with a name or a  
description and facts that  
make you think that about  
them

# USE ACTIVE VOICE

- Active voice: try to put the who in the sentence before the what, or for you English majors;
- Put the noun before the verb.

Example: The car was driven by me.  
I drove the car.



# SIMPLE WORDS AND PHRASES

- This officer interrupted this officer's forward acceleration, immediately bringing this officer to a status of zero acceleration.  
I stopped.
- I affected a car stop and dismounted from my patrol vehicle  
I stopped and got out of the car.
- The anticipated response to the present date has been none.  
There has been no response.

# SIMPLE WORDS AND PHRASES

Made an effort, made an attempt, endeavored, attempted

tried

Maintained surveillance over, visually monitored

watched

Related, stated, verbalized, articulated

said

Informed, advised, indicated, communicated verbally

told

Initiated, instigated, commenced, inaugurated, originated

began

# SIMPLE WORDS AND PHRASES

Do not use abbreviations, unless you spell them out first.

Supervisory Border Patrol Agent (SBPA)

Patrol Agent in Charge (PAIC)

Chief Patrol Agent (CPA)

Do not use slang.

"laid in on a trail"

"wets" "wetbacks"

"Agent T asked the driver if he would open the trunk. The driver did not respond. Agent T then ran his Woody on the outside of the vehicle. The K-9 alerted on the trunk..."

"Subject states that the vehicle stopped once before encountering Border Patrol and the driver checked on the aliens in the truck when he received a peep on his peeper."



# CHECK YOUR SPELLING

Spelling is 100% effort.

Simple words? Use words you already know how to spell.

Watch for homonyms: to, too, two;  
there, they're, their



# AVOID CONCLUSIONARY WORDS

INDICATED  
REFUSED  
ADMITTED  
CONFESSED  
DENIED  
CONSENTED  
IDENTIFIED  
WAIVED  
PROFANITY  
THREATENING  
OBSCENE  
EVASIVE  
UNRESPONSIVE  
DECEPTIVE

A WORD FOR  
WORD OR  
APPROXIMATE  
QUOTATION OF  
WHO SAID  
WHAT

# AVOID CONCLUSIONARY WORDS

ASSAULTED  
ATTACKED  
ACCOSTED  
CONFRONTATION  
ESCALATED  
STRUGGLE ENSUED  
RESISTED  
BATTERED  
INTIMIDATED  
BULLIED  
FORCED

A FACTUAL  
ACCOUNT OF  
WHO DID  
WHAT

# AVOID CONCLUSIONARY WORDS

ANGRY  
UPSET  
NERVOUS  
EXCITED  
HAPPY  
UNHAPPY  
INTENTIONAL  
ACCIDENTAL  
ATTEMPTED  
HEARD  
SAW  
THOUGHT  
KNEW

THE FACTS THAT  
MAKE YOU THINK  
THIS ABOUT  
SOMEONE ELSE

# AVOID CONCLUSIONARY WORDS

## MATCHING THE DESCRIPTION

SUSPICIOUS

FURTIVE

STRANGE

ABNORMAL

TYPICAL

UNCOOPERATIVE

BELLIGERENT

COMBATIVE

OBNOXIOUS

ABUSIVE

EXIGENT

THE FACTS THAT  
MAKE YOU  
BELIEVE THESE  
APPLY



# SUMMARY

## GET IT ALL

- WHO
- WHAT
- WHEN
- WHERE
- HOW
- WHY

## GET IT RIGHT

- CHRONOLOGICAL
- CHECK AND DOUBLE-CHECK
- POWERS OF OBSERVATION
- PROOFREAD
- WHY?

## MAKE IT CLEAR

FIRST PERSON

NAMES-NOT  
LABELS

ACTIVE VOICE

SIMPLE WORDS

CHECK SPELLING

AVOID  
CONCLUSIONS

# MIRANDA

# Test Your Knowledge of *Miranda v. Arizona*

- If you arrest a person, you must immediately read him his *Miranda* warnings or you will have to release him.
- *Miranda* warnings must be read to a person during any seizure in which you intend to interrogate the person.
- If a person who is arrested is not read his *Miranda* warnings, the government will be unable to prosecute him for that crime.
- If you question someone who has been arrested without first reading him his *Miranda* warnings, physical evidence you find as a result of the questioning will be suppressed as the "fruit of the poisonous tree."
- As long as you are not asking a person questions, you are not "interrogating" him for *Miranda* purposes.





# Test Your Knowledge of *Miranda v. Arizona*

- You do not need to read an arrested person his *Miranda* warnings if he tells you that he already knows them.
- A person is not in “custody” for *Miranda* purposes unless he is told that he is under arrest or is placed in handcuffs.
- If a suspect, who is in custody, invokes his right to silence, you cannot talk to him again unless an attorney is present.
- If a suspect, who is in custody, invokes his right to counsel, you can re-approach him after a reasonable period of time to see if he’s changed his mind.
- Illegally present aliens are not entitled to *Miranda* warnings.





# Test Your Knowledge of *Miranda v. Arizona*

- You can question someone without reading him his *Miranda* warnings in order to “soften him up.” Start the interview, and then read his *Miranda* rights and begin questioning him again.
- The only language used for *Miranda* warnings is English.
- If you tell a person that he is under arrest but do not read him his *Miranda* warnings, the government cannot use any subsequent statements he makes against him.



# Fifth Amendment

- “No person...shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law....”
- *Miranda* required warnings in order to avoid acquiring compelled statements in violation of the 5<sup>th</sup> Amendment
- Miranda warnings required when the person is in Custody and the agent wants to Interrogate that person



November 6, 2017

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# Miranda

Custody = formal arrest or restraint on freedom of movement to the degree associated with formal arrest

*J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011)

*Maryland v. Shatzer*, 130 S. Ct. 1213 (2010)

*United States v. Hudson*, 210 F.3d 1184 (10<sup>th</sup> Cir. 2000)

Interrogation = words or actions the agent should know are reasonably likely to elicit an incriminating response

*United States v. Chen*, 439 F. 3d 1037 (9<sup>th</sup> Cir. 2006)

*United States v. Ayalew*, 563 F. Supp 2d 409 (N.D.N.Y. 2008)



# Miranda

- Procedure

*Berghuis v. Thompkins*, 130 S. Ct. 2250 (2010)

*Florida v. Powell*, 130 S. Ct. 1195 (2010)

- Response

- Right to Remain Silent
- Right to Attorney

- Consequences

- Suppression of Statement

*United States v. Patane*, 542 U.S. 630 (2002)

- Can't soften up

*Oregon v. Elstad*, 470 U.S. 298 (1985)

*Missouri v. Seibert*, 542 U.S. 600 (2002)

- Physical Evidence comes in

- Public Safety Exception

*Michigan v. Bryant*, 131 S. Ct. 1143 (2010)

- Transfer of Custody

- Citizenship Inquiries

*United States v. San Juan-Cruz*, 314 F.3d 384 (9<sup>th</sup> Cir. 2002)

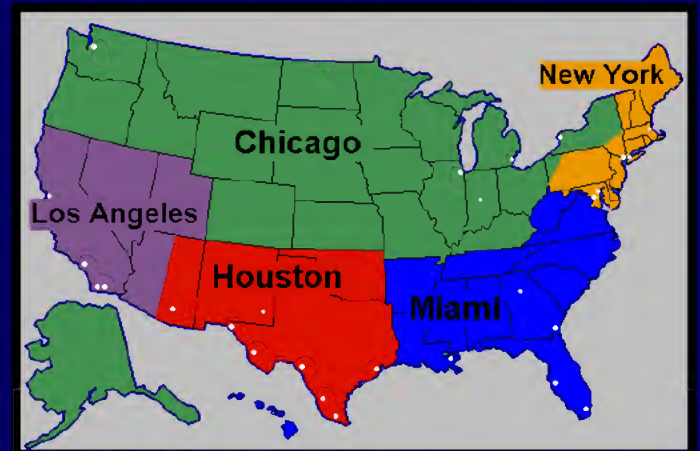
*United States v. Garcia-Hernandez*, 550 F. Supp. 2d 1228 (S.D. Cal. 2008)

# Miranda

- Juveniles/Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5031-5042
  - Read Miranda rights immediately after taking into custody
    - *J. D. B. v. North Carolina*, 131 S. Ct. 2395 (2011)
    - *United States v. Jose D.L.*, 453 F. 3d 1115 (9<sup>th</sup> Cir. 2006)
    - *United States v. C.M.*, 485 F.3d 492 (9<sup>th</sup> Cir. 2007)
  - Notify Parents or Guardians
    - Advise of Rights/Charges
    - If unable to reach parent contact consulate
    - Juvenile Must be Permitted Contact w/ Parent Before Interrogation
  - Notify U.S. Attorney's Office
    - Present Forthwith
  - Detention/Release

# PERSONAL LIABILITY

- Copies to
  - Immediate Supervisor
  - Associate or Assistant Chief Counsel CBP
  - U.S. Attorneys Office
- Gather information
- Do Not Delay





– Attorney Client Relationship

– Limits

- Federal Criminal Proceedings
- Agency Disciplinary Proceedings
- Civil Case related to federal criminal case



- 1. On Government Business
  - Had statutory authority to act
  - directed to act: supervisor, policy, regulation
- 2. Conduct Reasonably Foreseeable
  - Negligent Acts



- Wrong against an individual in which the injured party is entitled to damages
- Elements
  - Duty
  - Breach
  - Causation
  - Injury (Damages)



# Types of Claims

- Common-Law Torts – Absolute Immunity
  - Negligence
  - Assault and Battery
  - False Arrest
- Constitutional Claims – Qualified Immunity
  - Constitutional Claim
  - Clearly established rule
  - Reasonable officer

*Groh v. Ramirez*, 540 U.S. 551 (2004)



# Payment of Judgment

- The government may pay any judgment entered against the agent if:
  - Judge issues a certificate stating that the seizure was supported by probable cause
  - Judge issues a certificate stating that the agent's conduct was directed by a supervisor
  - CBP determines that payment of the judgment is in the best interest of the Agency

(b) (7)(C)



